

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.546 of 1994

Arising out of judgment dated 6th October, 1994 passed in Session Trial No. 37/1994 by the learned Sessions Judge, Saran, Chapra

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1. Suresh Singh, son of Lagan Singh
2. Bindeshwar Singh, son of Lagan Singh
Both residents of village Adamapur, P.S. – Bhelali, District - Saran

..... Appellants

Versus

The State of Bihar

..... Respondent

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Appearance :

For the Appellants : Mr. Kalikant Jha, Advocate
Mr. Ravindra Kumar Shukla, Advocate
Mr. Manish Jha, Advocate

For the State : Ms. S.B. Verma, Advocate
Mr. A. Sharma, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 03-04-2018

Heard learned counsel for the appellants and learned
Additional Public Prosecution for the State.

2. This criminal appeal has been preferred by the
two appellants who have been convicted by the learned Sessions
Judge, Saran, Chapra vide judgment dated 6th October, 1994
passed in Session Trial No. 37/1994 for the offences punishable
under Section 363/34 and 364/34 and Section 120B of the
Indian Penal Code (in short the “IPC”). Both the appellants have
been sentenced to undergo life imprisonment under Section
364/34 of the IPC and a further sentence of five years rigorous
imprisonment for each of the offences under Section 363/34 and



Section 120B of the IPC.

3. The prosecution case as appearing from the record of the trial court is based on the written complaint/report dated 04.09.1993 (Exhibit 2/1) of one Jay Prakash Singh (PW.7) who has alleged that on 29.08.1993 at about 10.00 a.m. Arun Kumar Singh who happened to be the son of co-sharer had taken away Tuntun Kumar son of the informant who was aged about 5½ years only on the pretext of his treatment.

4. It is stated that the co-villager Sikandar Sah (P.W.4) had seen Arun Kumar Singh with the boy on the way at about 11.00 a.m. It is further alleged that when the boy did not return in evening, Devanti Devi (P.W.6) who is the mother of the victim boy started searching the boy with the help of the co-villagers. P.W.6 was told by Sikandar Sah (P.W.4) that he had seen the appellant taking away the boy on a bicycle towards Marhoura. This witness Sikandar Sah (P.W.4) was also returning to his house from the said route. He informed that the boy Tuntun Kumar laughed on seeing him. P.W.4, Sikandar Sah has asked Arun Kumar Singh as to where he was going with the boy on which the said Arun Kumar Singh informed P.W.4 that he was taking the boy to a doctor for treatment. The informant further stated that when his wife got suspicious about Arun Kumar Singh as she apprehended that the boy had been



kidnapped, she sent a telegram to the informant on which the informant reached his house on 01.09.1993. He was told about the entire occurrence by his wife, it was further informed that on 31.08.1993 during night hours there was a panchayati in the village where father of Arun Kumar Singh, one Suresh Singh and Bindeshwar Singh both son of Lagan Singh and Lagan Singh son of Babulal Singh, all were present. In the said panchayati, Arun Kumar Singh and other persons namely, Suresh Singh, Bindeshwar Singh and Lagan Singh accepted that they had kept the boy concealed somewhere in the house of a relative and they promised that the boy will be handed over within two days. The informant explained that he did not approach the police immediately as for 2 to 4 days he kept on searching and when he got belief that his co-sharers have conspired together and kidnapped the boy who had not returned till date, he went to the police station on 04.09.1993 to lodge the written complaint.

5. On the basis of written complaint (Exhibit-2/1) a formal F.I.R. (Exhibit-3) was lodged giving rise to Amnour (Bheldi) P.S. Case No. 133/1993 under Section 363/34 of the IPC.

6. After investigation, police submitted a charge-sheet against 9 accused persons and the learned C.J.M. took



cognizance of the offence. On receipt of the records, a discharge petition was filed in the court of learned Sessions Judge on behalf of the accused Mohar Lal Singh, Mahesh Singh, Kedar Singh, Nageshwar Singh and Birendra Singh, all these five accused sought their discharge on the ground that in course of investigation no evidence was found against them in the alleged panchayati and there is no evidence of conspiracy against them therefore they should be discharged. The learned Sessions Judge vide his order dated 19.03.1994 accepted their discharge petition, the five accused persons were discharged.

7. Charges were, however framed against four accused persons namely, Arun Kumar Singh (appellant in Cr. Appeal (DB) No. 583/1994), Bindeshwar Singh, Suresh Singh and Lagan Singh for offences under Section 120B, 363/34, 364/34 and 386/109 of the IPC. In course of trial, accused Lagan Singh was acquitted, whereas three accused namely, Arun Kumar Singh and accused Bindeshwar Singh and Suresh Singh (in the present appeal) have been convicted and sentenced as stated hereinabove.

8. The learned Trial Court while convicting these two appellants have relied upon the prosecution story that there was a panchayati in the village on 31.08.1993 in which these two appellants had participated. The prosecution case was that



in the said panchayati the acquitted accused Lagan Singh had told these appellants that Tuntun Kumar should be returned and handed over within two days. The panchas had also told them that the expenses on searching out and bringing Tuntun Kumar will be paid. The trial court has believed the evidence of P.W.1 Kameshwar Singh on the point of panchayati. P.W.2, Sita Ram Singh is also the person who had participated in the panchayati and supported the statement of the prosecution that in the panchayati Lagan Singh was told to get back Tuntun through his sons and Lagan Singh had assured that he would get back Tuntun by searching out. This witness has stated that Lagan Singh had told that some money will be required in returning back Tuntun. Lal Babu Singh who is P.W.3 has also supported the prosecution case as disclosed by the informant Jay Prakash Singh (P.W.7).

9. The learned Trial Court found that the Investigating Officer (in short the "I.O.") had not supported the statement of witness Ram Kumar Singh on the point of Panchayati. The I.O. has stated that witness Devanti Devi (P.W.6) had not told him about the Lagan Singh saying her that he had got lifted the boy Tuntun. The learned Trial Court held that the prosecution witnesses were not able to prove the guilt of Lagan Singh beyond all reasonable doubts, and therefore, Lagan



Singh is entitled for the benefit of doubt.

10. Learned counsel representing the appellants in the present case submits that these appellants have been convicted without there being any evidence at all on the point of panchayati and no role has been assigned to these appellants in the matter of kidnapping of the victim boy. It is submitted that once the Trial Court disbelieved the factum of panchayati and Lagan Singh has been acquitted on the ground of insufficient evidence, there is no reason why these two appellants will stand convicted.

11. Learned A.P.P. representing the State has supported the prosecution case and submitted that there is no infirmity on the part of the Trial Court in appreciating the evidences available on the record.

12. We have heard learned counsel for the appellants and learned A.P.P. for the State as also perused the records of the learned Trial court. It appears that the prosecution story regarding the panchayati and the statements made by accused Lagan Singh in the said panchayati has not at all been believed by the learned Trial Court. In the written complaint (Exhibit-2), it is the case of P.W.7 that his wife had informed him about panchayati which had taken place in the night of 31.08.1993 where father of Arun Kumar Singh namely,



Dharmnath Singh and his associates had assembled. Suresh Singh, Bindeshwar Singh, Lagan Singh the three accused were said to be the instigators and it is alleged that these four accused namely, Arun Kumar Singh, Suresh Singh, Bindeshwar Singh and Lagan Singh accepted in presence of the Panchayat that they have kept the boy concealed in the relative's house and the boy will be returned within two days.

13. As against the prosecution case, P.W.1 Rameshwar Singh has stated that panchayati had taken place on the next day of the alleged occurrence. This witness has stated that in the panchayati Arun Kumar Singh was asked about the boy who had accepted that he had taken away Tuntun. Thereafter Lagan Singh, Bindeshwar Singh, Suresh Singh and Arun Singh told that Tuntun will be returned and handed over within two days. This witness P.W.1 has nowhere stated that these two appellants had accepted about the concealment of victim boy in their relative's house. According to him, five persons had been there in the panchayat, but he has accepted that the Chowkidar was not present in the panchayati. No documentary evidence however regarding the said panchayati, presence of the panchas and the proceedings of the panchas have been brought on the record by the prosecution. P.W.2, Siya Ram Singh has stated that accused Arun Kumar Singh had told in the



panchayati that these appellants had asked him to lift and take away Tuntun. He had named Suresh Singh, Bindeshwar Singh and Lagan Singh who had told him to kidnap the victim boy. The panchayati was held in another village namely, Pojhi which is at a distance of $\frac{1}{2}$ k.m. from Admapur where Arun Kumar Singh resides. This witness has stated that initially Arun Kumar Singh was asked about the occurrence and thereafter when other accused persons came they were also asked. He has admitted that P.W.7 is *Fufera Bhai* of this witness.

14. The evidence of P.W.4 who had stated that he had seen the accused Arun Kumar Singh taking away the victim boy would also show that in his examination in chief he has stated that panchayati was held in village Pojhi at the residence of Ramadhar Singh but said Ramadhar Singh has not been investigated and not examined in course of trial. P.W.6 is the wife of the informant who has also stated that the panchayati was held at the house of Ramadhar Singh and according to her statement in trial 400-500 persons had assembled in the panchayat. P.W.8 Suresh Prasad Singh, who is the Investigating Officer of this case, has proved the formal F.I.R. He had recorded the confessional statement of Arun Kumar Singh. In course of his cross examination, the I.O. has stated that P.W.1 Rameshwar Singh had not stated before him that accused Lagan



Singh, Bindeshwar Singh and Suresh Singh had got the victim boy kidnapped through Arun Kumar Singh and Arun Kumar Singh had made a statement to this effect to the panchayati. He has also stated that the witness Sikandar Sah had not told him that in the panchayati the accused persons had said that in lieu of bringing back the victim boy Tuntun some money will be required.

15. Having examined the prosecution evidence on the point of the panchayat held and the statement allegedly made by these appellants in the said panchayat we find that there is no reliable evidence on this point. The prosecution has miserably failed to prove that any panchayat was held, there is no explanation why panchayat will be held in a different village which is situated at a distance of $\frac{1}{2}$ k.m. from Adampur and if 400-500 persons had assembled at the place of panchayat in the house of Ramadhar Singh, then, why no independent witness has come forward to depose on behalf of the prosecution. Ramadhar Singh at whose door panchayat is said to have been held has not deposed in course of trial and the investigating officer has stated that witnesses such as P.W.1 and P.W.4 had not told him about these accused persons saying in the panchayat that some money will be required to be paid in lieu of the return of the victim boy. We find that the trial court has



already disbelieved the evidence against one of the accused Lagan Singh. The allegations against Lagan Singh and these two appellants are identical and the evidences against all of them are the same piece of evidence. In these circumstances, there is no reason to take a different view as regards these two appellants.

16. Finding that the prosecution has failed to prove the guilt of these two appellants beyond all reasonable doubts either in the matter of kidnapping of the victim boy or otherwise and that there is no evidence of panchayati, we are of the considered opinion that the appellants are entitled for benefit of doubt, accordingly, the conviction of these appellants cannot be upheld and the same is liable to be set aside.

17. The conviction of both the appellants is hereby set aside. The appeal is allowed. They are discharged from the liability of their respective bail bonds.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
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